IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DAWN SIGNORELLI, Petitioner/Appellee, v. JOSEPH SIGNORELLI, Respondent/Appellant.	2 CA-CV 2006-0126 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20051746

Honorable Karen S. Adam, Judge Pro Tempore

AFFIRMED

Cheryl K. Copperstone — Tucson
Attorney for Petitioner/Appellee

Joseph Signorelli — Tucson
In Propria Persona

P E L A N D E R, Chief Judge.

¶1 In this dissolution of marriage action, appellant Joseph Signorelli appeals from the decree, entered after a trial, and challenges numerous trial court rulings.[1] He raises eighteen alleged errors and issues, mainly focused on his former wife's failure to respond properly to his discovery requests below. Finding no reversible error, we affirm.

BACKGROUND

¶2 On appeal from a decree of dissolution, "[w]e view the evidence in the light most favorable to sustaining the trial court's findings and determine whether there was evidence that reasonably supports the court's findings." *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 5, 972 P.2d 676, 679 (App. 1998); *see also Mitchell v. Mitchell*, 152 Ariz. 317, 323, 732 P.2d 208, 214 (1987). The parties were married in 1994 and had no minor children at the time appellee Dawn Signorelli filed for dissolution of the marriage in 2005. In her petition, Dawn requested the court to award her the household furnishings and furniture "currently left in [her] possession" and a Ford Bronco. She also stated that certain real

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[1]We note that Joseph's notice of appeal was filed on May 16, 2006, but dated April 7, 2006. The decree of dissolution, however, was filed on April 11, 2006, apparently making his appeal untimely. *See* Ariz. R. Civ. App. P. 9, 17B A.R.S. But, because Joseph was incarcerated throughout the proceedings below and on appeal, the "prisoner mailbox rule" applies. *See State v. Goracke*, 210 Ariz. 20, ¶¶ 5-6, 106 P.3d 1035, 1037 (App. 2005). That rule, "as applied to appeals, is 'that a pro se prisoner is deemed to have filed his notice of appeal at the time it is delivered, properly addressed, to the proper prison authorities to be forwarded to the clerk of the superior court.'" *Id., quoting Mayer v. State*, 184 Ariz. 242, 245, 908 P.2d 56, 59 (App. 1995). Joseph has provided this court a statement from the Arizona Department of Corrections that it sent his notice in April 2006, rendering his appeal, albeit premature, timely. *See* Ariz. R. Civ. App. P. 9(a); *Barassi v. Matison*, 130 Ariz. 418, 421, 636 P.2d 1200, 1203 (1981).

property, a GMC truck, and "all personal property acquired [by Joseph] before the marriage" should be awarded to him.

¶3 In his apparent answer to the petition, Joseph alleged that Dawn had "liquidate[d] assets" before filing her petition and owed him $228,000. Despite being incarcerated at the time of the filing, he also requested $1,500 per month in spousal maintenance because he was disabled and had helped pay for Dawn's education. Thereafter, Joseph filed a "[r]equest for production from petitioner" in which he requested various items of personal property and tax and financial records. Dawn moved to strike the request, but the trial court ordered her to respond to three requests—for tax returns from the year 2000 forward, for any bank statements from 2000 forward, and for utility bills or statements from 2003 forward.

¶4 Joseph later asked the trial court to enter an order of contempt against Dawn, arguing she had not produced all the information required by the court's previous order. He argued, inter alia, that Dawn "ha[d] not produced any and all bank accounts" or "all utility bills" and that she "[had] not show[n] where all of [his] money or property" had gone. At trial, however, Dawn testified she had produced the documents in her possession.

¶5 After a half-day trial, the trial court ordered the marriage dissolved and found that, "at the time of the filing of the petition . . . there [were] neither community debts nor assets to distribute" and that Joseph was not entitled to an award of spousal maintenance. After the trial, entry of the decree of dissolution, and even the filing of his notice of appeal,

Joseph continued to move for various discovery-related orders, alleging that Dawn had not complied with the trial court's prior discovery order.

DISCUSSION

¶6 Although Joseph presents eighteen issues on appeal, Dawn correctly points out that he did not raise several of his arguments below and, therefore, has waived them.[2] *See Orfaly v. Tucson Symphony Soc'y*, 209 Ariz. 260, ¶ 15, 99 P.3d 1030, 1035 (App. 2004). These include the issues Joseph raises about alleged perjury, the trial judge's alleged statement at trial that "she [had] never made" an order that Dawn should reply to his discovery requests, and his allegation that the "Judge act[ed] inap[propriately] when dur[]ing trial . . . Judge answered question[]s for the petitioner."

¶7 The remaining issues Joseph raises can essentially be condensed to six arguments: (1) Dawn failed to answer his interrogatories and requests for production; therefore, the trial court apparently erred in entering the decree of dissolution; (2) Dawn "hid[] monies and file[d] false statements"; (3) the trial court erred in denying his motion for "legal assi[s]tance"; (4) the court erred in entering a protective order against him; (5) the court erred in disposing of the parties' property and ruling that "[t]here is no community

[2]We note that, throughout most of their briefs, both parties fail to properly cite relevant authority or the record as required by Rule 13, Ariz. R. Civ. App. P., 17B A.R.S. In the future, such omissions may result in this court's dismissing an appeal or disregarding sections of a brief that fail to comply with the rules. *See State Farm Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990); *Flood Control Dist. v. Conlin*, 148 Ariz. 66, 68, 712 P.2d 979, 981 (App. 1985).

property or debt between the parties"; and (6) the court erred in finding he was not entitled to an award of spousal maintenance.

I. Production requests and interrogatories

¶8 In several related arguments, Joseph first maintains Dawn and her attorney failed to answer his discovery requests and "file[d] incomplete and false information on the petition for divorce and pretrial disclosure," thereby violating the "Arizona Rules of Court and ethics." And he contends the trial court erred "when [it] ruled that [it] would not hear motion[]s from [him], reg[]arding orders to compel, orders for contempt, request for sanction[]s and request for production." On appeal, "a trial judge's ruling on a discovery-related issue will not be disturbed absent an abuse of discretion." *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, ¶ 10, 63 P.3d 282, 284 (2003). And "[w]e defer to the judge with respect to any factual findings explicitly or implicitly made, affirming them so long as they are supported by reasonable evidence." *Id.*

¶9 We begin by addressing the adequacy of Dawn's petition. Section 25-314(A), A.R.S., requires a petitioner to allege, inter alia, "that the marriage is irretrievably broken" and to "set forth" various facts. Dawn met those requirements in her petition, and Joseph does not argue any of the required elements were missing from it. Because § 25-314 does not require a petition to contain financial and property disclosures, Joseph's arguments about such omissions are meritless.

¶10 Next, we note that although Joseph relies primarily on Rule 37, Ariz. R. Civ. P., 16 A.R.S., Pt. 1, on appeal, he did not move below to compel Dawn to comply with his discovery requests pursuant to that rule until after he had filed his notice of appeal. "It is the general rule that the trial court loses jurisdiction while an appeal is pending except in regard to matters which will be in furtherance of the appeal." *Burkhardt v. Burkhardt*, 109 Ariz. 419, 421, 510 P.2d 735, 737 (1973). Thus, the trial court properly declined to rule on that motion, over which it had no jurisdiction.

¶11 Beyond that motion, because Joseph does not properly cite the record, it is difficult to ascertain exactly which motions he is referring to in his opening brief. But Joseph made numerous motions below on discovery-related matters, including some timely made and ruled on by the trial court, some belatedly made after his notice of appeal, and some apparently made to the trial court via ex parte communication. As noted above, the trial court was without jurisdiction to hear motions made after Joseph filed his notice of appeal. *See id.* at 421, 510 P.2d at 737. Under Rules 26, 26.1, and 33(a), Ariz. R. Civ. P., 16 A.R.S., Pt. 1, however, parties have a duty to respond to discovery requests, to make certain disclosures, and to answer interrogatories, even without a motion to compel such actions. We therefore consider whether the trial court abused its discretion in denying Joseph's timely and properly filed discovery-related motions.

¶12 Before trial, Joseph filed two "request[s] for production," demanding, inter alia, that Dawn produce certain items or report "the date of sale and amount each item sold

for." As previously noted, the trial court ruled that Dawn should comply with three of Joseph's requests for production and ordered her to produce the tax records, bank records, and utility bills he had requested. Joseph later filed a "request for contempt of the court order," alleging that Dawn had failed to comply with the trial court's order. As Dawn states, however, "[n]othing in the record supports any of the allegations made" about her failure to provide discovery materials in accordance with that order.

¶13 Joseph did not object below to the scope of the trial court's order for discovery, and the record supports the court's implicit finding that Dawn had complied with it. At trial, Dawn testified she had given all the requested items in her possession to her attorney, and Joseph presented no evidence to suggest that her attorney did not properly disclose those items. In sum, deferring to the trial court's findings of fact, as we must, we cannot say the court abused its discretion in denying his motions. *See Twin City Fire Ins. Co.*, 204 Ariz. 251, ¶ 10, 63 P.3d at 284.

¶14 Finally, citing the minute entry dated January 4, 2006, Joseph contends the trial court erred when it "barred [him] from fil[]ing any motions with the court, and refused to hear any issue[]s before trial." In fact, in that minute entry, the trial court stated it would not grant a hearing "regarding issues which have been ruled upon by the Court," including the discovery matters noted above. It further stated "it ha[d] received documents from [Joseph] in violation of [its] order against ex parte communication." Indeed, two months earlier, the court stated it had received correspondence from Joseph and had warned him

that he should send "all future letters . . . through the appropriate pleadings filed with the Court and served on the opposing party."

¶15 A trial court is not obligated to revisit rulings it has already made. *See Powell-Cerkoney v. TCR-Mont. Ranch Joint Venture, II*, 176 Ariz. 275, 278, 860 P.2d 1328, 1331 (App. 1993). The trial court did not err in refusing to do so or in rejecting motions made through ex parte communications. Such communications are improper, and a trial court may not consider them. *See San Carlos Apache Tribe v. Bolton*, 194 Ariz. 68, ¶ 8, 977 P.2d 790, 794 (1999) ("Ex parte communications with a judge are prohibited . . . ."). The fact that Joseph appears pro se in this matter did not excuse him from his responsibility to properly file motions with the court. *See Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983) ("It is well established that where a party conducts his case in propria persona . . . he is held to the same familiarity with required procedures . . . as would be attributed to a qualified member of the bar."). Thus, the trial court did not bar Joseph from making any motions, as he contends, but rather, correctly refused to hear motions he made improperly.

II. Dawn's alleged false statements

¶16 Joseph further contends Dawn "hid[] monies and file[d] false statements." He maintains that Dawn was untruthful in her disclosures to him and that, as an example, "if [she] has a bank account as stated [in her list of assets] then she must have at least one (1) dollar in said account, not N/A as stated." Joseph cites neither the record nor any legal

authority for this proposition. And, to the extent that his trial testimony about the parties' property and finances conflicted with Dawn's, witness credibility is a question for a trial court, and "[w]e will defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence." *Gutierrez*, 193 Ariz. 343, ¶ 13, 972 P.2d at 680.

¶17 Joseph also argues that Dawn "admitted on the stand that her answers [to an interrogatory about the parties' rental property] were untrue." In fact, Dawn testified she had "received . . . $2,500 from the four tenants [in one part of the building] and $350 from [a tenant in another part of the building]." In her answer to Joseph's request for production, however, she had reported receiving $2,250 and $750 from the tenants of the respective parts of the property. But the record does not show the time frames over which these rents were collected or whether the amounts collected changed between the filing of Dawn's discovery responses and her trial testimony. In any event, whether to impose sanctions for discovery violations lies in the sound discretion of a trial court. *Jimenez v. Wal-Mart Stores, Inc.*, 206 Ariz. 424, ¶ 5, 79 P.3d 673, 675 (App. 2003). In the absence of any evidence showing that Dawn lied about the amount of the rent or intended to obstruct the proceedings, we find no abuse of that discretion here.

III. Legal assistance

¶18 Joseph also argues the trial court erred by not granting his request for legal assistance. But, as Dawn points out, Joseph cites only criminal cases for this proposition. In that context, "a person is always entitled to the assistance of an attorney whether in

custody or not." *Kunzler v. Pima County Superior Court*, 154 Ariz. 568, 569, 744 P.2d 669, 670 (1987). But no such right exists in the civil context. *Cf. Kunzler v. Miller*, 154 Ariz. 570, 571, 744 P.2d 671, 672 (1987) (licensee not entitled to assistance of attorney in deciding whether to take "breathalyzer test" in civil driver's license suspension proceeding); *see also Acolla v. Peralta*, 150 Ariz. 35, 38, 721 P.2d 1162, 1165 (App. 1986) (Arizona constitutional guarantee of right to counsel is "totally inapplicable to a civil proceeding").

¶19 Likewise, to the extent Joseph attempts to suggest by this argument that the trial court's denial of his motion for assistance denied him access to the courts, we disagree. "The right of access to the courts requires the Department [of Corrections] to provide inmates with adequate law libraries *or* adequate assistance from persons trained in the law," but Joseph "does not argue that he was denied physical access to an adequate legal library." *White v. Lewis*, 167 Ariz. 76, 80-81, 804 P.2d 805, 809-10 (App. 1990).

¶20 Additionally, we note that Joseph filed his second "[m]otion for counsel" after he already had filed his notice of appeal. As noted above, the trial court had no jurisdiction over that motion and properly declined to rule on it. *See Burkhardt*, 109 Ariz. at 421, 510 P.2d at 737.

IV. Protective order

¶21 Joseph next argues the trial court erred in granting Dawn's motion for a protective order. Pursuant to Rule 26(c), Ariz. R. Civ. P., she requested the court to "order

that [her] physical address and phone number not be disclosed" to Joseph "due to [his] constant threats and harassment . . . as well as communications that are not relevant to [the] case." A hearing on the motion was set, and the court ordered the warden of the prison complex in which Joseph was incarcerated to make him available for the hearing. But Joseph did not appear, and finding good cause, the trial court granted Dawn's motion. We review a trial court's grant of a protective order for an abuse of discretion. *See Ingalls v. Superior Court*, 117 Ariz. 448, 449, 573 P.2d 522, 523 (App. 1977).

¶22 Although Joseph repeatedly objected to Dawn's general failure to provide complete responses to his discovery requests, he did not specifically object to entry of the protective order below. But, even were his argument not waived on that basis, *see Orfaly*, 209 Ariz. 260, ¶ 15, 99 P.3d at 1035, it is without merit. According to Joseph, Rule 26(c) "applies to depositions only." He cites no authority for that proposition, and we have found none. *See* Ariz. R. Civ. App. P. 13, 17B A.R.S. Indeed, Rule 26(c) itself discusses "discovery," and Rule 26(a) states that "[p]arties may obtain discovery by [inter alia] . . . depositions upon oral examination or written questions; written interrogatories; [or] production of documents or things."

¶23 We also reject Joseph's apparent argument that the trial court did not have an adequate basis for finding good cause to grant the motion for protective order. Although apparently "neither party [was] present at the hearing," as he alleges, the minute entry of the hearing shows that the hearing was held in the presence of Dawn's counsel and that it was

digitally recorded. The transcript from that recording is not part of the record, so we cannot determine what evidence was presented at the hearing. We therefore presume that it supports the trial court's findings. *See Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). In sum, the trial court did not abuse its discretion in granting the protective order. *See Ingalls*, 117 Ariz. at 449, 573 P.2d at 523.

V. Division of property

¶24 In its decree, the trial court stated "[t]here is no community property or debt between the parties." The decree did not specifically mention separate property. Joseph asserts that the trial judge violated Arizona law "when she ruled there was no monie[]s or prop[er]ty to be d[i]vided in the divorce" and that he is "entitled to monies and property he had before the marriage, and social security income from during the marriage." In dividing property, a trial court must consider the current value of the marital property. *Cf. Koelsch v. Koelsch*, 148 Ariz. 176, 183, 713 P.2d 1234, 1241 (1986) (where retirement benefit has matured, court must divide it on basis of present value). "The trial court's apportionment of community property will not be disturbed on appeal absent an abuse of discretion." *Gutierrez*, 193 Ariz. 343, ¶ 5, 972 P.2d at 679; *see also Hrudka v. Hrudka*, 186 Ariz. 84, 93, 919 P.2d 179, 188 (App. 1995).

¶25 Evidence presented at trial supports the trial court's finding that the parties had no property to divide at the time of the dissolution. Dawn testified that the government had seized the parties' pickup truck after Joseph was arrested. She also testified they had

not received any money from a lawsuit the couple had brought against a credit union. And she testified she had sold several items to pay debts, attorney fees, and her living expenses. Dawn also testified that much of their personal property was lost when someone stole the trailer she had used on a trip to Montana. Finally, she testified she had given a key to their storage unit to Joseph's daughter and did not know where other items were, but she did not have them. In fact, Joseph admitted at trial that he could not "prove any property [existed] on the date of filing."

¶26 Additionally, to the extent Joseph argues that Dawn lost or wasted his separate property, the evidence supports a finding that much of the property Joseph claims he "entrusted" to Dawn during his incarceration was purchased during the marriage and, therefore, was community property rather than his separate property. *See* A.R.S. § 25-211. During a marriage, "[t]he spouses have equal management, control and disposition rights over their community property." A.R.S. § 25-214(B). Thus, Dawn was entitled to dispose of the parties' community property during Joseph's incarceration. And Joseph did not "present any competent evidence to contradict the necessity of [her actions and has therefore] failed to prove [Dawn] was not acting for the benefit of the community." *Neal v. Neal*, 116 Ariz. 590, 593, 570 P.2d 758, 761 (1977).

¶27 Furthermore, Joseph signed a power of attorney before he was incarcerated, giving Dawn the power to collect and make payments with his property, including his social security benefits, and to "acquire and sell" real or personal property. Thus, unless or until

Joseph revoked the power of attorney, Dawn could legally dispose of any of his property, including the social security benefits he claims should have been awarded to him as separate property. *See Gomez v. Maricopa County*, 175 Ariz. 469, 474, 857 P.2d 1323, 1328 (App. 1993) ("[A]n agent performing an act authorized by a power of attorney has the same legal consequences as if the principal had performed."); *see also Luna v. Luna*, 125 Ariz. 120, 123, 608 P.2d 57, 60 (App. 1979) (social security disability benefits are separate property).

¶28 Thus, there was evidence to support the trial court's implicit finding that Joseph's arguably separate property had either been disbursed or lost before the dissolution. In sum, we cannot say the trial court abused its discretion in expressly finding there was no community property to divide and implicitly finding there was no separate property to assign. *See* A.R.S. §§ 25-213(A) (spouse's property owned before marriage is separate property of that spouse); 25-318(A) ("[T]he court shall assign each spouse's sole and separate property to such spouse."); *see also Thomas v. Thomas*, 142 Ariz. 386, 390, 690 P.2d 105, 109 (App. 1984) ("An appellate court may 'infer from any judgment the findings necessary to sustain it if such additional findings do not conflict with express findings and are reasonably supported by the evidence.'"), *quoting Wippman v. Rowe*, 24 Ariz. App. 522, 525, 540 P.2d 141, 144 (1975).

VI. Spousal maintenance

¶29 Joseph lastly argues the trial court erred by finding "[t]he requirement for spousal maintenance has not been met pursuant to A.R.S. § 25-319." He argues that Dawn "clearly has property and income" and that he "has none" because he "is unable to be self suffic[ie]nt through appropr[i]ate employment." He also maintains that he contributed to Dawn's earning ability and that she fraudulently disposed of community property. Therefore, he argues, the trial court should have granted him the $1,500 per month in spousal maintenance that he requested. We review a trial court's decision to grant or deny spousal maintenance for an abuse of discretion, and we "will affirm the judgment if there is any reasonable evidence to support it." *Gutierrez*, 193 Ariz. 343, ¶ 14, 972 P.2d at 681.

¶30 A trial court may order spousal maintenance if it determines it is appropriate in view of the factors listed in § 25-319. Those factors include whether a spouse lacks funds to provide for his or her needs, whether a spouse is unable to be self-sufficient, whether a spouse contributed to the educational opportunities of the other spouse, and the duration of the marriage. § 25-319(A). If a maintenance award is appropriate, the trial court then considers a variety of statutory factors to determine the amount of that award. § 25-319(B).

¶31 As Dawn states, a "[c]ourt does not look forward to the future as to what the needs of the person will be. The view must be at the time of [dissolution]." *See Neal*, 116 Ariz. at 593, 570 P.2d at 761 ("[U]nless a spouse meets the requirements of A.R.S. § 25-319(A) at th[e] time [of dissolution], spousal maintenance is impermissible."). Because Joseph was incarcerated at the time of the dissolution and, as an inmate, was supported by

the state, he failed, at a minimum, to meet two of the four criteria for an award of maintenance. Thus, we cannot say the trial court abused its discretion in denying his request.

DISPOSITION

¶32 The trial court's decree of dissolution is affirmed. Dawn has requested an award of attorney fees on appeal pursuant to A.R.S. § 25-324, arguing that "[t]his appeal is frivolous and is an attempt to hinder and be burdensome to [her]." In our discretion, we deny her request. *See Cummings v. Cummings*, 182 Ariz. 383, 388, 897 P.2d 685, 690 (App. 1994).

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge